IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.196 OF 2005

Indumati R. Satam — Petitioner

versus

Municipal Corpn. of Greater Mumbai and others — Respondents

WITH
WRIT PETITION (LODGING) NO.197 OF 2005

Smt.Vijaya Laxman Ghadi — Petitioner

versus

Municipal Corpn. of Greater Mumbai and others — Respondents

WITH
WRIT PETITION (LODGING) NO.198 OF 2005

Savitri Laxman More — Petitioner

versus

Municipal Corpn. of Greater Mumbai and others — Respondents

WITH
WRIT PETITION (LODGING) NO.199 OF 2005

Pandurang D. Phadtare — Petitioner

versus

Municipal Corpn. of Greater Mumbai and others — Respondents

WITH
WRIT PETITION (LODGING) NO.200 OF 2005

Smt.Anandibai S. Shilkar — Petitioner

versus

Municipal Corpn. of Greater
Mumbai and others Respondents

WITH
WRIT PETITION (LODGING) NO.201 OF 2005

Smt.Devkibai V. Khot and others Petitioners

versus

Municipal Corpn. of Greater
Mumbai and others Respondents

WITH
WRIT PETITION (LODGING) NO.202 OF 2005

Nandkumar D. Sawant Petitioner

versus

Municipal Corpn. of Greater
Bombay and others Respondents

Mr.Madhav Jamdar, adv. for petitioners.

Mr.C.U.Singh with Ms.A.K.Savla, advocates for respondents nos.1 to 3.

Mr.Y.S.Jahagirdar, Senior Counsel with Mr.S.A.Sawant, advocate for respondent no.4.

Mr.N.V.Walavalkar with Mr.H.V.Kode, advocate for respondent no.5.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 4th February 2005

PC :

1. Heard Mr.Jamdar for petitioners, Mr.C.U.Singh with Ms.A.K.Savla for respondents 1 to 3,

Mr.Y.S.Jahagirdar with Mr.S.A.Sawant for respondent no.4 and Mr.N.V.Walavalkar with Mr.H.V.Kode for respondent no.5.

2. These petitions seek to challenge the order passed by the Principal Judge, City Civil Court on 3rd November 2004 in Miscellaneous Appeals Nos.179 of 2003, 195 of 2003, 196 of 2003, 157 of 2003, 156 of 2003, 158 of 2003 and 159 of 2003. That order confirmed the order dated 18th July 2003 passed by the Inquiry Officer of the first respondent Municipal Corporation in a proceeding to evict the petitioners from tenement that they are occupying in a Chawl owned by first respondent Municipal Corporation known as "Gora Gandhi Chawl".

3. Prior to the aforesaid eviction proceeding, notices have been given to the petitioners under section 105(B)(1)(c) of the Mumbai Municipal Corporation Act contending that the Corporation premises in the occupation of the petitioners are required by the Corporation in public interest.

4. These premises which are known as Gora Gandhi Chawl consist of some 165 tenements with three commercial tenements. All those tenements have

become dilapidated and the Municipal Corporation had been submitted a proposal by overwhelming number of occupants of those tenements that the property be permitted to be developed under a scheme of reconstruction or redevelopment by Co-operative Housing Societies of old buildings owned by the Corporation, which scheme is permissible under Development Control Regulation No.33(7) of the Development Control Regulations for the area of Greater Bombay framed under the Maharashtra Regional & Town Planning Act. Appendix-III to these Regulations lay down regulations for reconstruction in details. Clause-I of these regulations provides that the new building may be permitted to be reconstructed in pursuance of an agreement by at least 75% of the landlords/ occupants of the old buildings, and also that all the occupants of the old buildings shall be accommodated in the redeveloped building/s.

5. On receiving the notice, petitioners contended before the Inquiry Officer that there is no support of 70% of the occupants to the scheme which was proposed to be taken up for reconstruction. It was submitted that at the highest, some 115 tenants had supported the

scheme which was less than 70%. Evidence was laid before the Inquiry Officer and it was put to the Corporation's Officer in cross examination that the adequate number had not been reached. The officer representing the Corporation had stated that some 35 more persons had also given consent letters. That was in answer to question no.32. He stated that he will produce those letters whenever available. It was also put to the officer that some 43 persons who had signed the consent letters were not in fact tenants but were members of families. The Inquiry Officer still took a view that necessary number had been attained and therefore, passed order of eviction. That order has been left undisturbed in appeal.

6. Mr.Jamdar, learned counsel for petitioners submitted that inasmuch as 70% people had not supported the scheme, the development could not be taken up, and therefore, the eviction was not in public interest. That itself meant that the scheme was not in public interest. As against that, if we see the order of Inquiry Officer, it is seen that the buildings concerned had become dilapidated and it was necessary to reconstruct and develop. It is for this purpose that necessary resolutions were passed by different

bodies like Improvement Committee and General Body of the Municipal Corporation. Whether 70% occupants support a particular scheme or not and whether the scheme should be developed through a particular society and a developer, is an aspect which is different from the necessity of reconstruction of the property concerned. The development and reconstruction of the property is sought to be taken up in public interest. Whether the petitioners are with Group-A or Group-B is not something which can decide whether the project is in public interest or not. As far as petitioners are concerned, Clause-I of the Appendix-III to Regulation 33(7) of D.C.Regulations provides that all occupants are to be housed in the reconstructed scheme. The petitioners will also be provided accommodation in the reconstructed scheme. As to whether 70% tenants support a particular scheme or not will decide as to whether Developer-A should develop the property or Developer-B should develop as an agent of the Municipal Corporation. That does not decide the question as to whether it is in the public interest or not. We find that the action of Municipal Corporation in evicting said persons was undoubtedly in public interest. The eviction order was fully justified since the

petitioners refused to shift to alternative site and, therefore, the Principal Judge of City Civil Court was also right in coming to the conclusion that there was no error on the part of evicting authority. Petitions are, therefore, devoid of merit and dismissed.

7. Though we are dismissing the petitions, we record statement made by Mr.Singh appearing for Municipal Corporation that by now 156 tenants have signed the agreements for development except petitioners herein and in all some 9 persons.

8. Mr.Jahagirdar appearing for the developer states that the transit accommodation is ready. Other tenants have shifted over there and the petitioners will be given the transit accommodation immediately. The project of reconstruction is held up only because of the petitioners not shifting.

9. In view of the dismissal of these petitions, it will be open to the Municipal Corporation to take further steps in accordance with law.

10. Mr.Jamdar at this stage prays for stay of the order. His request is rejected.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)